

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

FRED HUMMEL and WALTER	:	No. 4:17-CV-1613
HYDE,	:	
	:	
Plaintiff,	:	(Judge Brann)
	:	
v.	:	(Magistrate Judge Carlson)
	:	
SHAMOKIN MANOR CARE, <i>et al.</i> ,	:	
	:	
Defendants.	:	

ORDER

OCTOBER 10, 2017

Before the Court for disposition is a Report and Recommendation filed by Magistrate Judge Martin C. Carlson on September 12, 2017.¹ In this Report, Magistrate Judge Carlson recommended that (1) Plaintiffs be granted leave to proceed *in forma pauperis*, but (2) the Court dismiss the Complaint without prejudice to Plaintiff Walter Hyde either retaining an attorney or pleading and conducting his own case personally.² No objections to this Report and Recommendation have since been filed.

Upon designation, a magistrate judge may “conduct hearings, including evidentiary hearings, and ... submit to a judge of the court proposed findings of fact

¹ ECF No. 4.

² ECF No. 4.

and recommendations.”³ Once filed, this Report and Recommendation is disseminated to the parties in the case who then have the opportunity to file written objections.⁴ Where no objection is made to a report and recommendation, the court should, as a matter of good practice, “satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.”⁵ Nevertheless, whether timely objections are made or not, the district court may accept, reject or modify, in whole or in part, the findings or recommendations made by the magistrate judge.⁶

Following independent review of the record, I am satisfied that the Report and Recommendation contains no outcome determinative legal error. I note, however, that throughout his Report, Magistrate Judge Carlson transposes the names of Plaintiffs Fred Hummel and Walter Hyde. Based on the Court’s review of the Complaint, it is in fact Walter Hyde, a non-lawyer, who is bringing a claim on behalf of his friend, Fred Hummel. Fred Hummel is therefore the proper Plaintiff and party to institute this action. Magistrate Judge Carlson’s reasoning, however, is equally applicable to this scenario as one uncounseled party may not

³ 28 U.S.C. § 636(b)(1)(B).

⁴ 28 U.S.C. § 636(b)(1).

⁵ *Rieder v. Apfel*, 115 F.Supp.2d 496, 499 (M.D. Pa. 2000) (citing *United States v. Raddatz*, 447 U.S. 667, 676 (1980)).

⁶ 28 U.S.C. § 636(b)(1); Local Rule 72.31.

file claims on behalf of another uncounseled party.⁷ Therefore, to the extent that Report and Recommendation erroneously grants Walter Hyde leave to amend, that portion is rejected. Because the factual allegations of the Complaint concern actions taken against Fred Hummel, it is Mr. Hummel who is granted leave to amend the Complaint either *pro se*, or with a retained attorney.

AND NOW, therefore, **IT IS HEREBY ORDERED** that:

1. Magistrate Judge Martin C. Carlson's Report and Recommendation (ECF No. 4) is ADOPTED in part and REJECTED in part in accordance with the above reasoning;
2. Plaintiffs are granted leave to proceed *in forma pauperis*, but;
3. The Court will dismiss the Complaint *without prejudice* to the Plaintiff Fred Hummel either retaining an attorney to bring the action on his behalf or pleading and conducting his own case personally.
4. Plaintiff Fred Hummel is granted leave to file an Amended Complaint **within twenty one (21) days** of this Order in which he avers either *pro se* or counseled representation. If no amended complaint is filed

⁷ *Osei-Afriye by Osei-Afriye v. Med. Coll. of Pennsylvania*, 937 F.2d 876, 882 (3d Cir. 1991); *Lutz v. Lavelle*, 809 F.Supp. 323, 325 (M.D.Pa. 1991) ("It is a well established principle that while a layman may represent himself with respect to his individual claims, he is not entitled to act as an attorney for others in a federal court.").

within that timeframe, the action will be summarily dismissed pursuant to Fed. R. Civ. P. 41(b).

BY THE COURT

s/ Matthew W. Brann

Matthew W. Brann

United States District Judge